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7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**
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10 ADRIAN MOON,

11 Plaintiff,

12 v.

13 M. SPEARMAN,

14 Defendant.

Case No. 2:12-cv-8022-RGK(MLGx)

**ORDER DENYING PLAINTIFF'S
MOTION TO RECUSE JUDGES R.
GARY KLAUSNER AND MARC L.
GOLDMAN [21]**

15 Pending before the Court is Plaintiff Adrian Moon's Motion to Recuse Judges
16 R. Gary Klausner and Marc L. Goldman. (ECF No. 21.) Having considered
17 Plaintiff's arguments, the Court deems the matter suitable for decision without oral
18 argument. Fed. R. Civ. P. 78; L.R. 7-15.

19 The standard for disqualification of a judge is established by 28 U.S.C. §§ 144
20 and 455. Section 144 permits a party seeking disqualification to file an affidavit
21 setting forth facts and reasons for his belief that the judge "has a personal bias or
22 prejudice either against him or in favor of any adverse party." 28 U.S.C. § 144.
23 When determining the legal sufficiency of the affidavit, "the factual allegations in the
24 affidavit must be accepted as true," although "general or conclusory allegations will
25 not support disqualification." *United States v. Zagari*, 419 F. Supp. 494, 500-01 (N.D.
26 Cal. 1976). Further, the alleged bias must be from an extrajudicial source and "result
27 in an opinion on the merits on some basis other than what the judge learned from his
28 participation in the case." *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966).

1 Under 28 U.S.C. § 455, a judge must disqualify himself in any proceeding in
2 which his impartiality might reasonably be questioned. 28 U.S.C. § 455(a). But the
3 substantive standard for recusal under 28 U.S.C. § 144 and 28 U.S.C. § 455 is the
4 same—“Whether a reasonable person with knowledge of all the facts would conclude
5 that the judge’s impartiality might reasonably be questioned.” *United States v.*
6 *Hernandez*, 109 F.3d 1450, 1453–54 (9th Cir. 1997).

7 In this case, Plaintiff generally alleges that Judges Klausner and Goldman
8 decided his case based on personal bias. These allegations are insufficient to support
9 disqualification. More interestingly, Plaintiff declares that Judge Goldman exhibited
10 personal bias through racial epithets and condescending remarks in his rulings.
11 (Moon Decl. 6–7.) Upon review of the record, the Court finds no evidence of such
12 behavior. To the extent this alleged behavior was exhibited at hearings, Plaintiff did
13 not provide the Court with any transcripts, and the Court has none to review.

14 While racial epithets may be evidence of personal bias, criticism is not. The
15 Court finds that any alleged criticism towards Plaintiff may be derived from Plaintiff’s
16 frivolous and vexatious behavior in his various lawsuits. That is, Plaintiff filed in
17 2012, nine lawsuits for habeas corpus and civil rights violations relating to his
18 incarceration. (Moon Decl. 12.) The Court also notes that Plaintiff failed to follow
19 proper procedure on numerous occasions. Based on this conduct, criticism towards
20 Plaintiff is likely warranted.

21 And as for Judge Klausner’s and Judge Goldman’s adverse rulings, Judicial
22 rulings alone almost never constitute a valid basis for a bias or partiality motion.
23 *Liteky v. United States*, 510 U.S. 540, 555 (1994). Rulings by themselves cannot
24 show reliance upon an extrajudicial source, and opinions formed by the judge based
25 on the evidence of the case “do not constitute a basis for a bias or partiality motion
26 unless they display a deep-seated favoritism or antagonism that would make fair
27 judgment impossible.” *Id.*


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1 The remedy for Plaintiff's dissatisfaction is to appeal; a disqualification motion
2 serves no purpose unless personal bias is established. *Mayes v. Leipziger*, 729 F.2d
3 605, 607 (9th Cir. 1984) ("A judge's previous adverse ruling alone is not sufficient
4 bias."). This Court finds no partiality in Judge Klausner's and Judge Goldman's
5 adverse rulings because they are based on Plaintiff's lack of merit and procedural
6 errors.

7 In sum, the Court finds that Plaintiff's motion fails to state sufficient facts and
8 reasons to disqualify Judges Klausner and Goldman under 28 U.S.C. §§ 144 or 455.
9 Plaintiff's assertions do not show any personal bias stemming from an extrajudicial
10 source. Accordingly, Plaintiff's motion is **DENIED**.

11 **IT IS SO ORDERED.**

12 October 31, 2012

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15 **OTIS D. WRIGHT, II**
16 **UNITED STATES DISTRICT JUDGE**
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